

State of New Mexico

Susana Martinez

Governor

June 24, 2011

Dr. Alfredo Armendariz
Regional Administrator (6-A)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dear Dr. Armendariz:

On behalf of the New Mexico Environment Department, I am pleased to submit to the Environmental Protection Agency the enclosed revisions to the New Mexico State Implementation Plan (SIP). These revisions include amendments to New Mexico's Regional Haze SIP under 40 CFR § 51.309.

The hearing record for all of the SIP revisions is attached, which includes the revised SIP, filed regulations, transcripts, exhibits, public notices, affidavits of publication, the notice of intent to present technical testimony, and public comments.

Included with the attached hardcopy of the hearing record is an electronic copy of the record provided on disk which I certify to be an exact duplicate of the hardcopy.

These SIP revisions satisfy the requirements of the Clean Air Act, comply with EPA regulations and policy, and will result in significant emission reductions while preserving the proper federal-state partnership envisioned under the Clean Air Act. As such, EPA must approve these revisions. In addition, because the enclosed SIP revisions address two different provisions of the federal Clean Air Act, I believe EPA should address them separately.

First, the enclosed "Interstate Transport SIP" addresses Section 110 of the Act, which requires states to avoid interfering with any other states' implementation plans for visibility. As made clear in the Interstate Transport SIP submitted in 2007, and further explained in two letters to EPA Region 6 from the previous New Mexico administration (one from Governor Richardson on June 12, 2009 and another from a member of his staff on May 6, 2010), New Mexico has already satisfied its Interstate Transport obligations. However, the enclosed Interstate Transport SIP supplements those previous submittals by confirming that the emissions from New Mexico sources will not exceed the assumptions utilized in the modeling conducted by the Western Regional Air Partnership (WRAP), upon which other western states' visibility plans are based.

EPA has already recognized that “the analysis conducted by the WRAP provides an appropriate means for designing a [plan] that will ensure that emissions from sources in New Mexico are not interfering with the visibility programs of other states.” In fact, the enclosed Interstate Transport SIP confirms that emissions will actually be much lower than the WRAP modeling assumptions.

Second, the enclosed revisions to the 2003 “Regional Haze Section 309 SIP” and the enclosed “Regional Haze Section 309(g) SIP” (together, the “Regional Haze SIPs”) address New Mexico’s obligation to reduce visibility impairment at national parks and wilderness areas (“Class I areas”) in accordance with Sections 169A & 169B of the Clean Air Act. The Regional Haze SIPs satisfy New Mexico’s regional haze requirements by adopting new sulfur dioxide (SO₂) milestones for the Section 309 Backstop Trading Program, establishing reasonable progress goals and a long-term strategy for New Mexico’s nine Class I areas, and adopting a variety of control measures to address emissions of visibility impairing pollutants from New Mexico sources. Most notably, the enclosed Regional Haze SIP also includes a Best Available Retrofit Technology (BART) determination for the San Juan Generating Station, which requires the installation of a Selective Non-Catalytic Reduction (SNCR) system to meet EPA’s presumptive BART limit for nitrogen oxides (NO_x).

I am aware that EPA has proposed a different plan for implementing the Interstate Transport program and at least a portion of the Regional Haze program in New Mexico through a combined Federal Implementation Plan (FIP). I am also aware of EPA’s concern that it is bound by a court order to complete that rulemaking effort by August 5, 2011. However, the court order imposing the August 5, 2011 deadline only requires EPA to address Interstate Transport requirements before that date. In addition, the proposed FIP suffers from a variety of legal and technical flaws and inappropriately seeks to address only an isolated portion of the regional haze program. Under these circumstances, I believe EPA can and should address the Interstate Transport program and Regional Haze program separately. Doing so will enable EPA to address New Mexico’s Interstate Transport requirements by the court-ordered deadline, while allowing additional time for review of the more lengthy and complicated Regional Haze SIPs.

One of the fundamental principles expressed in Section 101 of the Clean Air Act is that “air pollution control at its source is the primary responsibility of States and local governments.” That principle is nowhere better illustrated in the Act than in its visibility provisions, which, as EPA and the courts have recognized, grant to the states significant discretion in the implementation of measures to address visibility impairment. In designing the regional haze program, Congress recognized that the individual states are best-equipped to balance the need for robust environmental protections with the costs those protections necessarily entail.

Moreover, nothing in the Clean Air Act requires EPA to address Interstate Transport and Regional Haze requirements together. On the contrary, EPA has generally addressed these programs separately in the past. As just one example, EPA Region 8 recently proposed to take separate action on the Interstate Transport and Regional Haze implementation plan revisions submitted by the state of Colorado. Even EPA’s proposed FIP for New Mexico itself contemplates separate Interstate Transport and Regional Haze plans with regard to SO₂ emissions.

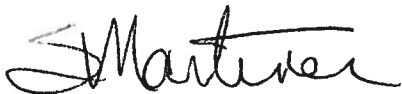
Accordingly, EPA should meet its August 5, 2011 deadline by simply approving New Mexico's prior Interstate Transport submittals, as supplemented by the enclosed Interstate Transport SIP. Even if EPA does not agree that New Mexico's prior submittals have already satisfied its Interstate Transport obligations, EPA should be able to act on New Mexico's four-page Interstate Transport SIP before August 5, 2011.

Since the court order does not require EPA to address New Mexico's Regional Haze program by August 5, 2011, New Mexico is now, as of this submittal, in the same position as nearly every other state – awaiting EPA action on its Regional Haze SIP. As with other states, EPA must determine whether New Mexico's Regional Haze SIPs are complete no more than six months from this date and, following that completeness determination or the expiration of six months, EPA must act to approve or disapprove those SIPs within twelve months, including time allowed for public notice and comment on the proposed action. Because EPA will be required to consider New Mexico's Regional Haze SIPs regardless of whether it finalizes the proposed FIP, EPA should take no action on its proposed FIP, particularly since the August 5, 2011 deadline does not apply to regional haze. At a minimum, EPA should reopen the docket on the proposed FIP for at least ninety (90) days to accept further comment in light of the submission of these SIP revisions.

I hope you will begin an immediate, expedited review and approval of the enclosed SIP revisions and, as recommended above, take separate action on the separate Interstate Transport and Regional Haze requirements of the Clean Air Act.

If there are any questions concerning this SIP submittal, please contact Raj Solomon at (505) 827-2855.

Sincerely,



Susana Martinez
Governor

Enclosures

cc: Guy Donaldson, EPA Region 6
Dave Martin, NMED Cabinet Secretary
Raj Solomon, NMED Deputy Cabinet Secretary